

A "retailer maintaining a place of business in Illinois" as described in 86 Ill. Adm. Code 150.201(i), is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. (This is a GIL).

May 6, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated March 30, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

COMPANY is a company which markets financial services products. We contract with independent contractors in your state, among others, to sell financial products of insurance and mutual fund companies. COMPANY receives the commissions for these sales and pays approximately 90% of the commissions to the independent contractors, reporting the commissions through 1099's to the states and federal government. The contractors are appointed with the insurance companies and send the insurance applications directly to the insurance companies.

COMPANY creates brochures and sales materials, which it ships to contractors in your state from a facility in STATE. COMPANY has no physical presence or office in your state nor do we provide any to the independent contractors. These materials are aids to the contractors, but are not resold by them. Sales of these brochures represent only approximately 1.25% of total revenue. In the spirit of compliance, COMPANY would like to ascertain whether sales of these brochures are considered taxable or exempt for sales tax purposes in your state. While they appear exempt to our lawyers and accountants, we would rather receive your opinion before the sales get beyond the de minimus level.

Thank you for your assistance with this matter, and we look forward to hearing from you. We would like to receive a reply in writing. If you need further clarification to make a decision, please contact me at #####.

The Retailers' Occupation Tax Act imposes a tax on persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption and is measured by the seller's gross receipts from sales made in the course of such business. See the enclosed copy of 86 Ill. Adm. Code 130.101.

"Gross receipts" means all of the consideration actually received by the seller, except traded-in tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.401. The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (1996 State Bar Edition).

An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

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If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk

Enc.